

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

|                                   |   |                                |
|-----------------------------------|---|--------------------------------|
| ALTON D. BROWN,                   | ) | 2:10cv1398                     |
|                                   | ) | <b>Electronic Filing</b>       |
| Plaintiff,                        | ) |                                |
|                                   | ) | Judge David Stewart Cercone    |
| v.                                | ) | Chief Magistrate Judge Lenihan |
|                                   | ) |                                |
| JEFFREY A. BEARD, <i>et al.</i> , | ) |                                |
|                                   | ) |                                |
| Defendants.                       | ) |                                |

**MEMORANDUM ORDER**

This case is before the Court on the Report and Recommendation filed by Chief Magistrate Judge Lisa Pupo Lenihan on October 5, 2012. (ECF No. 41.) It was recommended that the Defendants' Motion to Dismiss filed at ECF No. 39 be granted to the extent Defendants sought transfer of this case to the United States District Court for the Eastern District of Pennsylvania. In all other respects, it was recommended that the Motion to Dismiss be denied without prejudice so that Defendants could refile upon transfer. It was also recommended that the Defendants' Motion to Dismiss at ECF No. 36 be denied without prejudice to Defendants' right to refile upon transfer.

The parties were served with the Report and Recommendation and informed that they had until October 22, 2012, to file written objections. After granting Plaintiff two extensions of time to do so, he filed a Response to Defendants' Motions to Dismiss and the Magistrate Judge's Report and Recommendation. (ECF No. 44.) The Court hereby construes Plaintiff's response as Objections to the Report and Recommendation but finds that they do not undermine the Magistrate Judge's recommendation that this case be transferred and that Defendants be allowed to refile their Motions to Dismiss upon such transfer. At such time, the Eastern District may

wish to construe Plaintiff's response at ECF No. 44 as a response in opposition to Defendants' Motions to Dismiss.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, and Objections thereto, the following order is entered.

AND NOW, this 22<sup>nd</sup> day of January, 2013,

**IT IS HEREBY ORDERED** that the Motion to Dismiss filed by Defendants Beard, Day, DiGuglielmo, Hiltner, Knaver, Murray, Myron, Stanishefski, Varner, White, and Williamson (ECF No. 39) is granted to the extent Defendants seek transfer of this case to the United States District Court for the Eastern District of Pennsylvania. In all other respects, the Motion to Dismiss is denied without prejudice to Defendants' right to refile once this case has been transferred.

**IT IS FURTHER ORDERED** that the Motion to Dismiss filed by Defendants Arias and Prison Health Services, Inc. (ECF No. 36) is denied without prejudice to Defendants' right to refile once this case has been transferred.

**IT IS FURTHER ORDERED** that the Report and Recommendation (ECF No. 41) dated October 5, 2012, is **ADOPTED** as the opinion of the Court.

**IT IS FURTHER ORDERED** that this case be transferred to the United States District Court for the Eastern District of Pennsylvania.

**AND IT IS FURTHER ORDERED** that the Clerk of Court mark this case **CLOSED** and **TRANSFER** forthwith.



David Stewart Cercone  
United States District Judge

cc: Alton D. Brown  
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*(Via First Class Mail)*

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*(Via CM/ECF Electronic Mail)*